

MEMORANDUM

To: Steve Ledoux, Town Manager
From: Stephen Anderson, Town Counsel
Re: Requirements for Open Meetings under the New OML
Date: May 24, 2010

Effective July 1, 2010, the new Open Meeting Law ("New OML") takes effect.¹ In preparation for the implementation of the New OML, here is a list of some of the requirements and some of the most significant changes affecting the day-to-day way the Town conducts open meetings.² (All emphasis in the text below is added to the language of the New OML; highlighted in yellow are some changes of note):

DEFINITIONS:

The New OML adds some definitions and changes others, which will affect how the law applies and is implemented.

1. Deliberation

- a. Expressly includes communication "through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction."
 - i. As a practical matter, under the current OML, the Town already avoided conducting meetings or deliberations by email.
- b. Expressly excludes "the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed."
 - i. This provision allows the advance distribution of meeting preparation packages, "provided that no opinion of a member is expressed."

2. Intentional violation

- a. New definition:
 - i. "act or omission by a public body or a member thereof"
 - ii. "in knowing by violating the open meeting law"
- b. Under § 23(c)(4), the Attorney General can "issue an order to ... impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation."

¹ See Chapter 28 of the Acts of 2009, §§ 17-20 and 106 (amending G.L. c. 30A, to add §§ 18-25).

² The changes pertinent to Executive Sessions are discussed in a separate memorandum. The changes pertinent to the Attorney General's role and enforcement of the new OML will also be discussed in a separate memorandum.

3. **Meeting**

- a. A “deliberation by a public body with respect to any matter within the body’s jurisdiction”
- b. Expressly excludes:
 - i. “an on-site inspection of a project or program, so long as the members do not deliberate;”
 - ii. “attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;”
 - iii. “attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;”
 - iv. “a meeting of a quasi--judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it;” or
 - v. “a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.”

4. **Preliminary screening**

- a. New definition:
 - i. “the initial stage of screening applicants”
 - ii. “conducted by a committee or subcommittee of a public body”
 - iii. “solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview”
- b. Under § 21(a)(8), this new definition is pertinent to a specific ground for entering an executive session.

OPEN MEETINGS

1. **Open to the Public**

- a. Except for valid executive sessions, “all meetings of a public body shall be open to the public.”

2. **Required Posting**

- a. Post notice of every meeting (except for emergencies) “at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays.”
 - i. For example: For a Monday Selectmen’s meeting, the notice needs to be posted on Thursday, not Friday.
- b. In an emergency, post notice “as soon as reasonably possible prior to such meeting.”
- c. Notice shall:
 - i. Be printed in a legible, easily understandable format
 - ii. Contain the date, time and place of the meeting

- iii. Contain a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

3. **Required Filing and Accessibility**

- a. File the notice with the town clerk
- b. Post in a manner “conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located.”
 - i. The Attorney General’s office is promulgating regulations interpreting this provision.
 - ii. We expect the regulations to be available this summer.

4. **ABRSD Notices**

- a. The secretary of the regional school district committee
 - i. shall be considered to be its clerk
 - ii. shall file notice with the clerk of each town within the district and
 - iii. shall post the notice in the manner prescribed for local public bodies.

5. **Remote Participation**

- a. The Attorney General may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided,
 - i. the absent members and all persons present at the meeting location are clearly audible to each other;
 - ii. a quorum of the body, including the chair, are present at the meeting location.
- b. Such authorized members may vote and shall not be deemed absent.

6. **Video or Audio Recording**

- a. After notifying the chair of the public body, any person may
 - i. make a video or audio recording of an open meeting
 - ii. transmit the meeting through any medium,
 - iii. subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting.
- b. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

7. **Conduct of Meeting**

- a. No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.
- b. No person shall disrupt the proceedings of a meeting of a public body.
- c. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

8. Certification

- a. Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the Attorney General, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the Attorney General explaining the open meeting law and its application pursuant to section 19.
- b. Unless otherwise directed or approved by the Attorney General, "the appointing authority, ... town clerk ... or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records."
- c. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

MINUTES OF OPEN MEETINGS

1. Create and maintain accurate minutes of all open meetings setting forth
 - a. the date, time and place,
 - b. the members present or absent,
 - c. a summary of the discussions on each subject,
 - d. a list of documents and other exhibits used at the meeting,
 - e. the decisions made and the actions taken
 - f. the record of all votes.
2. No vote taken at an open session shall be by secret ballot.
3. Minutes must be created and approved in a timely manner.
 - a. if they exist and whether approved or in draft form
 - b. shall be made available upon request by any person within 10 days
4. Documents and other exhibits, such as photographs, recordings or maps
 - a. used by the body at an open session
 - b. part of the official record of the session

PUBLIC RECORDS, EXEMPT RECORDS

1. Public Records:
 - a. the minutes of any open session
 - b. the notes, recordings or other materials used in the preparation of such minutes
 - c. all documents and exhibits used at the session

2. Exemptions from Public Record Status:

- a. materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation
 - a. Under the New OML, the BOS may need to reconsider its evaluation forms and procedures to ensure they comply.
- b. materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.